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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~. 1902.

No. ~~559~~. 248.

THE UNITED STATES, APPELLANT,

vs.

EDWARD A. MOSELEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 24, 1902.
(18413)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 559.

THE UNITED STATES, APPELLANT,

vs.

EDWARD A. MOSELEY.

APPEAL FROM THE COURT OF CLAIMS.

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Court of Claims.

EDWARD A. MOSELEY }
vs. } No. 22494.
THE UNITED STATES. }

I—PETITION. *Filed January 28, 1901.*

To the Honorable the Chief Justice and Associate Justices of the Court of Claims:

The petition of Edward A. Moseley respectfully showeth:

I. That the petitioner is a citizen of the United States, and is the secretary and the disbursing agent of the Interstate Commerce Commission; that he has, since its organization, disbursed the moneys appropriated by Congress to carry out the objects of an act entitled "An act to regulate commerce," approved February 4, 1887; that these disbursements have always been made by direction of the said Commission, acting under the authority of section 18 of the said act as amended March 2, 1889; that in accordance with law, on September 30 and on December 31, 1898, and on March 31 and on June 30, 1899, the petitioner submitted his accounts and vouchers as said disbursing agent for the quarter and the year ending June 30, 1899, and on September 30 and on December 31, 1899, his supplemental accounts and vouchers for the year ending

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June 30, 1899, to the auditor for the State and other Departments; that the said auditor disallowed an item in said accounts of three hundred and ten dollars and thirty-seven cents ($310.37), that being the aggregate amount paid to the Western Union Telegraph Company, and to the Postal Telegraph Cable Company, by your petitioner, under the direction of the said Commission, for the transmission of telegraphs on the official business of the Interstate Commerce Commission; one of the vouchers for which is hereto attached as an exhibit and marked "Exhibit A."

II. That from such action of the Auditor for the State and other Departments in disallowing the item of $310.37 your petitioner appealed to the Comptroller of the Treasury, to whom, under the statute in such cases made and provided, an appeal regularly laid from the decision of the Auditor, a copy of which is herewith attached, marked "Moseley—Exhibit B."

III. That your petitioner received from the office of the Comptroller of the Treasury a communication bearing date July 23, 1900, a copy of which is hereafter filed, marked "Moseley—Exhibit C," from which it appears that the item of $310.37 had been disallowed by the Auditor for the State and other Departments, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

The communication then proceeds to review the case of Edward A. Moseley v. The United States, No. 21473, of the term of '98–99 of the Court of Claims, which was decided April 2, 1900, in favor of the petitioner, and concludes as follows:

"I can see no reason why the rule that is applied to the War Department and to all other departments of the Government should not apply

to the Interstate Commerce Commission. The fact that the Commission may send confidential telegrams where secrecy is a public necessity should not be made the excuse for the retention of all telegrams. * * *

To this general rule there is an exception. If the Chairman of the Interstate Commerce Commission had certified that any particular
3 telegrams sent by the Commission were of a confidential character and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit, such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other departments of the Government.

"The certificate should be signed by the chairman of the Commission, and the account should be attached to it and made part of it by distinguishing marks, so that it is made certain that the particular account is supported by the certificate.

"The action of the Auditor is affirmed, and upon revision I find and certify no differences."

IV. Petitioner charges that the amount of $310.37 disallowed as above shown was duly paid out and expended by him, under the direction of the Interstate Commerce Commission, for the transmission of telegrams on public business of said Commission, and he herewith appends a true copy of itemized vouchers approved by the chairman of the Interstate Commerce Commission upon which such expenditure was made, and he further appends a copy of the order made by the Interstate Commerce Commission on the 27th day of April, 1899, in regard to the demand of the Comptroller that copies of telegrams should be furnished to him with the quarterly accounts of the disbursing agent, and he charges that the provisions of this order were, by an order of the Commission dated June 7, 1900, made to apply to the messages covered by the vouchers disallowed by the Auditor in the case now under consideration, as will appear by the communication from the office of the Comptroller of the Treasury of July 23, 1900. Copies of said orders are hereto attached and marked "Exhibit G."

V. Petitioner charges that the statement of his account for the quarter ending March 31, 1900, was in the form prescribed by the statute, i. e., "Itemized vouchers therefor approved by the chairman of the Commission." Neither the Auditor nor the Comptroller of the Treasury con-
4 trovert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury by your petitioner to cover the amount of disallowance of $310.37. That the present case is in all its material features identical with the case decided by the Court of Claims between the same parties on April 2, 1900, except that in the present case the item was disallowed by the Auditor for the State and other Departments, and that action was affirmed by the Comptroller of the Treasury.

VI. Petitioner charges that full and substantial compliance has been made with the requirements of the Auditor's Office by the order of the Interstate Commerce Commission on June 7, 1900, and that the rule now sought by the Auditor and the Comptroller to be applied to and enforced against the Interstate Commerce Commission is not "the rule that is applied to the War Department, and to all the other Departments of the

Government," because, as your petitioner avers to be the truth, the exaction of copies of all telegrams sent and received and charged for in the several Executive Departments of the Government in the District of Columbia has never been enforced by the auditing officers in the Treasury or by the Comptroller of the Treasury in auditing the accounts of the disbursing officers of these Executive Departments, but the course of business as to the telegrams sent and received by the Executive Departments of the Government has been, and at the present time is, as follows:

All bureaus of the Treasury Department furnish copies of all telegrams, with the exception of the Secret Service Bureau, which furnishes the following certificate with each quarter's account in lieu of copies of telegrams, which is either signed by the Secretary, or Assistant Secretary by his order, and is as follows:

TREASURY DEPARTMENT,
OFFICE OF SECRETARY,
Washington, D. C.

I hereby certify that telegrams sent and received, charged for in the above bill, have been carefully read and examined, that they were on public business, that they were rendered necessary by the exigencies of the service, that the number of words, number of messages, their dates and places to and from which transmitted are correctly stated, and that the rates charged and allowed are the Government rate established for the fiscal year ending June 30, 19 .

It is further testified that it is inexpedient to attach the original telegrams to the accounts, that they were of such a confidential nature that it would be prejudicial to the public interest to have them exposed.

Approved:

Secretary or Assistant Secretary.

The State Department furnishes no copies of telegrams in any case, whether of a confidential nature or not. During the first part of 1900 the accounting officers of the Treasury Department demanded copies of telegrams from the State Department; and the following is an extract of the only reply that has ever been made to that demand:

JANUARY 26, 1900.

TO THE AUDITOR FOR STATE AND OTHER DEPARTMENTS,
Washington, D. C.

SIR: I have the honor to inform you that the withholding of the telegrams from the accounts of the above-mentioned disbursing officer is with the approval of this Department upon representation of the United States commissioner that many of the telegrams are of such a confidential nature that it is deemed inadvisable to accompany the vouchers with copies.

This is the last and only reply made to the accounting officers, and the State Department has never heard from the Treasury since in regard to same, and has never furnished any telegrams, notwithstanding which all telegraphic accounts have been allowed.

The War Department withholds some of the original telegrams from their accounts as being of a confidential nature, and furnishes the following certificate:

"I certify that the messages charged in the within-named account of

the Western Union Telegraph Company, amounting to $, were actually transmitted and that it would be prejudicial to the public interest to have them exposed; that they were on public business and contained
6 the number of words as charged; that they were day messages and no directions were given for transmission over a bond-aided line; that they have not been paid, and that they are payable from contingencies of the Army."

The Weather Bureau does not furnish any telegrams with their accounts, but they have notified their Auditor that they would furnish them at any time he demands them, but they claim that the reason they have not been furnished to or asked for by the accounting officer is that there is an understanding between them that there is a form used in stating the temperature from different points, and as all such telegrams contain the same number of words one original copy would cover the whole number in that regard.

The Navy Department furnishes a certificate with each quarter's accounts, as follows, viz, "Confidential: Would be prejudicial to public interests to transmit telegrams with vouchers."

The Post Office Department furnishes all telegrams, but have been doing so only within the last year. This is due to an order of the Comptroller of the Treasury requiring it to furnish a copy of each telegram to the Auditor, with the statement of each quarter's accounts.

The Interior Department and the Agricultural Department—with the exception of the Weather Bureau—furnish all telegrams with their accounts and make no exception.

In fact, the usual and ordinary course of business as to telegrams sent and received to and by all of the Executive Departments of the Government within the District of Columbia was, certainly as late as November 23, 1899, as is set forth in a stipulation in writing, entered into between petitioner on the one part and the United States, through its Assistant Attorney-General, on the other part, in the case lately pending between those parties in this court upon a similar cause of action, which stipulation is herewith appended, and since said date, and, as petitioner is informed, believes and so charges, has been and is as there
7 stipulated.

VII. That your petitioner is directed and controlled altogether by the Interstate Commerce Commission, whose secretary and disbursing agent he is, and whose orders he is bound to obey. That he is without power to comply with the order or demand of the Auditor
8 for the State and other Departments, and of the Comptroller, because of the order of the Interstate Commerce Commission of the 27th of April, 1899, and of the 7th of June, 1900, both of which were duly communicated to the Auditor and to the Comptroller, and because, further, that the telegrams, the production of which is required by the auditing officers, are not within the custody or under the control of your petitioner, but are under the exclusive custody and control of the Interstate Commerce Commission.

VIII. That, with the view of arriving at a satisfactory adjustment of the differences existing between the auditing officers of the Treasury and your petitioner, your petitioner did, on the 4th day of October, 1900, address to the Comptroller of the Treasury a communication in which, among other things, it was stated as follows, viz:

"I am authorized by the Commission to extend to the officers and agents referred to in this section (section 5 of the act of March 15th, 1898, acts 1897–8, 316) the fullest opportunity of making such examination in the offices of the Commission of all such books, papers, and other matter relating to the accounts of the disbursing agent as they may see proper to examine, and among these all such telegrams as are embraced in accounts of the disbursing agents. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should thereby be fully attained."

This communication is hereby appended, marked "Moseley—Exhibit D." To which communication your petitioner received a reply from the Comptroller of the Treasury, dated October 6, 1900, and herewith appended, marked "Moseley—Exhibit E." From all which it seems that the auditing officers of the Treasury are not at all disposed to be guided by the decision of the Court of Claims in the case above referred to, nor are disposed to avail themselves of the opportunity tendered to them of actually inspecting all the telegrams embraced in the accounts of
9 your petitioner and on file in the office of the Interstate Commerce Commission, but they appear inclined rather to stand rigidly upon their own unreasonable regulations.

In the opinion of the Court of Claims in the former case of Edward A. Moseley v. The United States, decided April 2, 1900, it is said:

"We are therefore inclined to the opinion that while the language that 'hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury' did not repeal the former act requiring the payment of such expenses to be made 'on the presentation of itemized vouchers therefor, approved by the chairman of the Commission,' it did nevertheless so modify it as to subject such expenses to audit 'by the proper accounting officers of the Treasury,' and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers."

This "satisfactory proof" your petitioner has offered to place before the auditing officers, under such reasonable conditions as would afford them the fullest scope of examination without exposing the telegrams to the danger of publicity, which the Commission felt obliged to secure them against.

It may not be improper in this connection to refer to a letter which affords contemporaneous documentary proof of the intent had in view by Congress by the provision requiring the expenses of the Commission to be audited by the proper accounting officers of the Treasury. This is a letter written to your petitioner by Senator Cullom, by whom the provision was introduced into the appropriation act of 1889, and which appears in 25 St., 939, and is herewith appended, marked "Moseley—Exhibit F."

That after the correspondence hereinafter set forth your petitioner, in order to have his said accounts settled, and not admitting that he was indebted to the United States for or on account of said disallowance by the accounting officers, paid into the Treasury of the United States the

sum of $310.37, so disallowed, and he now brings this suit to recover judgment for a like amount.

EDWARD A. MOSELEY.

DISTRICT OF COLUMBIA,
City of Washington:

Edward A. Moseley, being duly sworn, says that he is the petitioner in the foregoing petition, and that the matters set forth therein are true as he verily believes.

EDWARD A. MOSELEY.

Subscribed and sworn to before me this 26th day of January, 1901.

MARTIN S. DECKER,
Notary Public.

10 EXHIBIT A.

(Copy of voucher No. 249, in full.)

APPROPRIATION FOR INTERSTATE COMMERCE COMMISSION.

The United States, To Western Union Telegraph Co., Dr.

Interstate Commerce Commission, To Western Union Telegraph Company, Dr.

Date.		By whom sent.	City.	Number of words.	Cost.
1898.					
Nov.	2	Moseley to Prouty	Newport, Vt.	34	34
	5	Marchand to Campbell	St. Louis	20	25
	7	Marchand to Campbell	St. Louis	27	34
	9	Moseley to Purse	Savannah, Ga.	32	32
	11	Moseley to Calhoun	Danville, Ill	23	33
	12	Marchand to Seibert	Balto., Md.	27	33
	14	Moseley to Calhoun	Danville, Ill	28	28
	15	Decker to Smith	Charleston, S. C	30	30
	17	Burleigh to Pollock	St. Louis	29	36
		Burleigh to Miller	New York	24	24
		Marchand fr Arthur	Austin, Tex	29	44
		Marchand to Arthur	Austin, Tex	32	33
	18	Decker to Smith	Charleston, S. C	36	36
		Moseley to Mason	Pittsburg, Pa.	59	59
	19	Smith to Calloway	Minneapolis, Minn	80	1.00
	21	Burleigh fr Adams	Ann Arbor, Mich	28	28
		Connolly fr Marchand	Buffalo	19	20
		Shaver fr Gurley	New Orleans, La	30	38
		Shaver to Gurley	New Orleans, La	36	45
	22	Moseley fr Fellows	New York	20	20
		Moseley to Fellows	New Haven, Conn	26	26
	23	Decker to Smith	Charleston, S. C	24	24
		Knapp to Williamson	New York	41	41
	25	Decker to Smith	Charleston, S. C	23	33
	28	Prouty to Tomlinson	Chicago	32	32
		Burleigh to Wright	San Francisco	29	58
	29	Smith to Riddell	Kansas City, Mo	41	51
	30	Moseley to Fellows	Portland, Me	20	20
		Moseley to Mahoney	St. Louis, Mo	14	25
					89.96

(Across the face with red ink:) Paid by check No. 585086, on U. S. Treasurer to order of Western Union Tel. Co. Approved for $9.96. Signed—Martin A. Knapp Chairman.

For telegraphing in Nov. 1898 as per statement, $9.96.

Received at Washington, D. C., this 12 day of January, 1899, from Edward A. Moseley, Secretary and Disbursing Agent Interstate Commerce Commission, the sum of nine dollars and ninety-six cents, in full payment of the above account, having signed duplicate receipts therefor.

[Sign here.] WESTERN UNION TELEGRAPH CO.,
JAS. H. KING, *Cashier.*

I certify that the above account is correct; that the articles herein enumerated have been received or services performed; that they were necessary for, and have been, or will be, applied to the work of the Interstate Commerce Commission; and that, to the best of my knowledge and belief, the prices paid were reasonable and just.

E. A. MOSELEY,
Secretary, I. C. C.

[Duplicate.]

Voucher No. 249, 3 Quarter, 1899.

Appropriation for Interstate Commerce Commission.

Accounts of Edward A. Moseley, Secretary and Disbursing Agent, I. C. C.

Paid to Western Union Tel. Co.
For Telegrams.
Amount..... $9.96
Paid by Check No. 585086
For..... $9.96
Dated Janv. 12, 1899.
On U. S. Treasurer.

.....

11—3022

11	Above voucher brought forward	$9.96	
	Also the following similar vouchers:		
Western Union Telegraph Company, Voucher No.	138	29.41	
	143	23.81	
	192	25.58	
	193	1.09	
	195	24.36	
	301	19.40	
	328	38.58	
	359	18.84	
	440	24.93	
	495	26.85	
	553	31.18	
	576	33.73	
	605	.32	
			$308.04

Postal Telegraph Cable Company, Voucher No.	136	$0.20	
	240	.26	
	379	.49	
	442	.21	
	522	.30	
	585	.20	
	593	.67	
			$2.33
Total			$310.37

EXHIBIT B.

JUNE 15, 1900.

HON. R. J. TRACEWELL,

Comptroller of the Treasury, Washington, D. C.

SIR: I have the honor to transmit to you herewith a communication from the office of the Auditor for the State and other Departments, dated the 18th of May, 1900, from which it appears that the vouchers for certain disbursements made by me, as the disbursing agent of the Interstate Commerce Commission, for telegrams, a statement of which furnished by me and appearing in the communication, have been disallowed by the Auditor, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such confidential nature that to file them with the accounts would be prejudicial to the public interests."

I desire to appeal from this decision of the Auditor, disallowing these vouchers, and respectfully ask that such appeal be allowed and acted upon by you, as I am, indeed, expressly ordered by the Commission to do. I am ordered by the Interstate Commerce Commission to transmit to you certified transcripts from the proceedings of the Commis-
12 sion, of the dates of 27th April, 1899, and of 7th June, 1900, and I have the honor to enclose the same herewith.

The vouchers so disallowed were, as I am advised, held up, in the Office of the Auditor from the date they were laid before him for audit, to await the decision of the Court of Claims in the case then pending before it of Edward A. Moseley v. United States, involving the identical question presented here. The decision in that case was announced on April 2, 1900, and discloses the findings of fact and the conclusion of law ascertained by that court. The conclusion of law is stated as follows:

"The claimant's statement of account being in the form prescribed by statute, i. e., 'itemized vouchers therefor, approved by the chairman of the Commission,' is prima facie correct. The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury; and, as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly."

I beg to invite your attention to the fact found by the court, that the order of the Commission of 27th April, 1899, which is set out in the findings of fact, was a sufficient compliance with your regulations requiring a certificate of the chairman of the Commission as to the confidential

nature of the telegrams involved in that case, and to the further fact that the order of the Commission of 7th June, 1900, expressly declares that the order of April 27th, 1899, applies in its provisions to the messages covered by the vouchers suspended and now disallowed by the Auditor.

So, I respectfully submit, inasmuch as the vouchers now disallowed stood and now stand in the same predicament as those which the Court of Claims has by its decision distinctly adjudicated were adequate and in full compliance with the requirements of the statute, no reason is apparent why the judgment of the court should be disregarded and set
13 at naught, and the needless burden and expense imposed upon me of again appealing to that court for redress.

Very respectfully,

EDW. A. MOSELEY,
Secretary & Disbursing Agent.

EXHIBIT C.

Appeal No. 4554.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
July 23, 1900.

E. A. Moseley, secretary and disbursing agent Interstate Commerce Commission, by his letter filed June 16, 1900, appeals from the action of the Auditor for the State and other Departments on his account for disbursements on account of said Commission for the quarter ending March 31, 1900.

The matter complained of is the disallowance by the Auditor of the sum of $310.37, paid to the Western Union Telegraph Company and the Postal Telegraph Company for the transmission of telegrams, which the Auditor disallowed, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

In 5 Comp. Dec., 700, the accounts of Mr. Moseley as such disbursing agent, relative to vouchers of the Western Union Telegraph Company and the Postal Telegraph Company, amounting to $73.24, were before the Comptroller for revision. In that case the Comptroller addressed a communication to Mr. Moseley calling for the original telegram or copies, to which Mr. Moseley made this response:

"The Commission instructs me to say that for the present it declines to submit copies of telegrams covered by these vouchers. Aside from the fact that it is impracticable to do so in some cases, a considerable number of the messages were highly confidential, and the Commission does not think it suitable that the contents should be known to every
14 clerk who has access to your files. These vouchers show the dates, number of words, places from and to which sent, and the charge for each message transmitted. The chairman has certified to their necessity, and approved the amount paid therefor. No law requires that copies shall be exhibited to the accounting officers, and any general regulation to that effect would be unreasonable as applied to the telegraphic business of the Commission.

"Entertaining this opinion, the Commission directs me to inquire whether you will insist on being furnished with copies of its telegrams?"

To this inquiry the Comptroller replied:

"If any of the telegrams were confidential, furnish a certificate from the chairman of the Commission stating that it would be prejudicial to the public interest to disclose the contents. Copies of all other telegrams are required."

On April 27, 1899, it was ordered by the Commission:

"That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest."

It will be observed that the above order is applicable, not to any telegrams in particular, but to all telegrams—to those that had been sent at the time the order was made and to those that might be sent hereafter.

No satisfactory reply to the Comptroller's second call for evidence having been furnished, the charges for telegrams, amounting to $873.24, were disallowed by the Comptroller on April 17, 1899. Subsequently, Mr. Moseley brought suit in the Court of Claims to recover said $873.24. In that case, decided April 2, 1900, No. 21473, the court said:

"We are therefore inclined to the opinion that while the language 'that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury' did not repeal the former act requiring payment of such expenses to be made 'on the presentation of itemized vouchers therefor, approved by the
15 chairman of the Commission,' it did, nevertheless, so modify it as to subject such expenses to audit, 'and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers.'

"The alternate requirement of copies of telegrams, or, if they were confidential, a certificate to that effect from the chairman of the Commission, was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account."

By an order of the Commission, dated June 7, 1900, the provisions of the order of April 27, 1899, supra, were made to apply to the messages covered by the vouchers disallowed by the Auditor in the case now under consideration.

In 4 Comp. Dec., 237, in regard to withholding by the Secretary of War, for reasons similar to those stated by the Interstate Commerce Commission, of telegrams submitted as vouchers, it was said:

"Some unusual public interest may require the sending of a confidential telegram where secrecy is a public necessity. In such a case the suppression of such a message would be justified on the ground of paramount necessity, and the general requirement of accounting must yield. Such instances, fortunately, are of rare occurrence, and should not be made the excuse for the retention of all telegrams. When such an exceptional case presents itself a certificate of the Secretary of War may

be accepted in lieu of the messages, provided said certificate covers all material points."

I can see no reason why the rule that is applied to the War Department and to all other departments of the Government should not apply to the Interstate Commerce Commission. The fact that the Commission may send confidential telegrams where secrecy is a public necessity should not be made the excuse for the retention of all telegrams. The accounting officers are charged with the duty of passing upon accounts, and where disbursing agents claim credit for disbursing public money the accounting officers are entitled to the best evidence that such disbursements were legal and proper; and the general rule is that
16 where the disbursement is on account of telegrams, the telegrams themselves should accompany the vouchers. The telegrams show whether they were on public business, from whom and from where, and to whom and to where sent, whether day or night messages, the number of words, whether over bond-aided lines, and whether the charge for the same message had been made in some other account, etc. To this general rule there is an exception. If the chairman of the Interstate Commerce Commission had certified that any particular telegrams sent by the Commission were of a confidential character, and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit, such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other Departments of the Government.

The certificate should be signed by the Chairman of the Commission, and the account should be attached to it and made part of it by distinguishing marks, so that it is made certain that the particular account is supported by the certificate.

The action of the Auditor is affirmed, and upon revision I find and certify no differences.

L. P. MITCHELL,
Acting Comptroller.

EXHIBIT D.

OCTOBER 4, 1900.

To the COMPTROLLER OF THE TREASURY.

SIR: In my accounts as disbursing agent for the Interstate Commerce Commission for the quarter ending March 31, 1900, there was an item of $310.37, being the aggregate amount paid by me to the Western Union Telegraph Company for the transmission of telegrams on the official business of the Commission.

This entire item was disallowed by the Auditor for the State and other Departments, "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

17 It is not my intention, and it would serve no useful purpose, to recite here all the considerations which were vainly urged upon you in the correspondence between us in regard to similar action on your part,

in a case identical in all its material features with the present, which has passed into judgment.

In that case the Court of Claims, to which I was driven for redress, gave judgment in my favor for the full amount, which you had disallowed.

The facts upon which that judgment was formed, as well as the reasons which compelled the judgment, are identical with those existing in the present case, and must inevitably, in that tribunal, lead to like results.

It is true that the Court of Claims, in its opinion in that case, said:

"The alternative requirement of copies of telegrams, or, if they are confidential, a certificate to that effect from the Chairman of the Commission, was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account."

But it immediately adds:

"The question before us is, Are the payments shown in the accounts to have been made to the several telegraph companies proper and legal charges against the Government?" and this question the court answered in the affirmative and in accordance with the prayer of my petition.

With the merely abstract question of the reasonableness or unreasonableness of the rules and regulations adopted for the government and conduct of your office, I have nothing to do. Against your attempted application, however, of such rules and regulations to my official conduct, and especially the reiterated attempts to require of me the production of papers that are not within my control and which I am prohibited by the Commission, whose agent I am, from disclosing to the scrutiny of all the employees in the accounting offices of the Treasury, I do protest, and again refer the matter to that sense of propriety and justice which should be the guide of all official action.

It appears from your own opinion in this case that the Interstate
18 Commerce Commission, on June 7, 1900, made the same certificate as to the telegrams involved here as was made by it on Apr 27, 1899, as to the telegrams in the former case.

The Commission has complied substantially, if not literally, with the requirement of your office, in certifying that "such messages are so far confidential as to justify refusal to disclose their contents."

One fact is manifest, and that a fact relied on by the Court of Claims in the case decided by it, to wit:

"The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury, and as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly."

In what particular can this case be distinguished as to these features from the case in which that reason for judgment was assigned?

I think it unseemly that such a controversy as this should be waged between two officials of the Government, engaged in the common endeavor for a pure and correct administration, and I am unwilling, on my part, that even the appearance of contumacy or of frivolous obstruction should be imputed to me.

The grave and substantial objection has been made by the Commission that the exposure of its telegrams to the numerous Treasury employees

who might have access to them were they filed as exhibits with the disbursing agent's accounts would very seriously impair the efficiency of the Commission.

By the act of March 15, 1898, acts 1897–98, page 316, it is provided:

"Sec. 5. All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to the inspection and examination by the Comptroller of the Treasury and auditors of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officers."

I am authorized by the Commission to extend to the officers and agents referred to in this section the fullest opportunity of making such
19 examination, in the offices of the Commission, of all such books, papers, and other matter relating to the accounts of the disbursing agents as they may see proper to examine, and, among these, all such telegrams as are embraced in the accounts of the disbursing agent. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should thereby be fully attained.

I respectfully ask that the action of the auditing and reviewing officers as to the item of $310.37 for telegrams in my accounts for the quarter ending March 31, 1900, be reconsidered, and the tender here made of all such books and papers in the offices of the Commission be accepted by you as a compliance with the requirement of your office.

Very respectfully,

EDW. A. MOSELEY,
Secretary.

EXHIBIT E.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, October 6, 1900.

E. A. MOSELEY, Esq.,
Secretary and Disbursing Agent, Interstate Commerce Commission.

SIR: I am in receipt of your communication of the 4th instant, wherein, I assume, you intend to request that I review the decision of this office of the date of July 23d last, signed by the Acting Comptroller, in which the action of the Auditor was affirmed disallowing an item in your account for the sum of $310.37 paid by you to the Western Union Telegraph Co. and the Postal Telegraph Co. for the transmission of certain telegrams, because of your failure to furnish copies of such telegrams, or to furnish a certificate that the same were confidential in their nature, signed by the chairman of the Interstate Commerce Commission.

I know of no reason why the Interstate Commerce Commission should not be subject to the same rules of evidence relative to telegrams as other bureaus and departments of the Government. This rule requires that copies of all telegrams be submitted, or, if they are confidential, a certificate to that effect from the head of the Department.

20 This is a reasonable rule, and I cannot see my way clear to relax it and accept your offer to exhibit these telegrams to my

agents when performing their duties under the act of March 15, 1898 (30 Stat., 316). This act is in no way connected with the question of proper proof to be required before allowing a disbursing officer credit for a sum claimed to have been disbursed by him.

If you expect credit as a disbursing officer in your account, you will have to comply with the reasonable requirements of the accounting officers as to the proof required.

Respectfully, R. J. TRACEWELL,
Comptroller.

EXHIBIT F.

UNITED STATES SENATE,
Washington, D. C., September 15, 1899.

HON. EDWARD A. MOSELEY,
Secretary Interstate Commerce Commission, Washington, D. C.

MY DEAR SIR: I understand that you are having some trouble in having your accounts settled by the First Comptroller. I am a little surprised at this, because the question was raised once before, and in the sundry civil bill of March 2, 1889, the following proviso was inserted:

"Provided, that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury."

This provision was inserted by me, as I recollect it, in the Committee on Appropriations of the Senate, at the request of the Interstate Commerce Commission and yourself, and in the form desired by you. It was intended to provide for the crediting of such vouchers as had been approved by the chairman of the Commission, and for the passage of your accounts without unnecessary delay. This proviso I supposed would do away with any further trouble in the passage of your accounts as presented.

Very truly, yours, S. M. CULLOM.

21 EXHIBIT G.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 27th day of April, A. D. 1899.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Commissioners.

The following proceedings were had, to wit:

REVISION OF ACCOUNTS.

The subject of the revision of accounts of the secretary and disbursing agent of the Commission by the Comptroller of the Treasury being under consideration, the secretary presented a communication from the Comptroller, dated April 17, 1899, relating, among other things, to the telegraphic messages of the Commission.

It was ordered that so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such

messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest.

It was also ordered, in accordance with the practice heretofore always required by the Commission, that no telegraph bills be paid by the disbursing agent except upon itemized vouchers showing the date, name of sender and receiver, places from and to which sent, number of words, and amount charged of each message paid for, and only after such
22 itemized vouchers have been carefully compared with the messages on file with the Commission.

A true copy?
[SEAL.]

EDW. A. MOSELEY,
Secretary.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of June, A. D. 1900.

Present: Hon. Martin A. Knapp (chairman), Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, commissioners.

The following proceedings were had, to wit:

EXAMINATION OF ACCOUNTS.

The subject of the examination of the accounts of the secretary and disbursing agent of the Commission by the Auditor for State and other Departments being under consideration, the Secretary presented a statement of differences amounting to $310.37, dated May 18, 1900, relating to telegraphic messages of the Commission disallowed by said Auditor "because of failure to furnish copies of all telegrams for which charge was made, or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests."

It was ordered that the secretary appeal to the Comptroller of the Treasury from this decision of the Auditor, and furnish the Comptroller with a copy of the order of the Commission of April 27, 1899, the provisions of which apply to the messages covered by the vouchers suspended and now disallowed by the Auditor.

A true copy:
[SEAL.]

EDW. A. MOSELEY,
Secretary.

23 II.—TRAVERSE. *Filed June 10, 1901.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attor-

ney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

24 III.—FINDINGS OF FACT AND CONCLUSION OF LAW. *Filed October 28, 1901.*

This case having been heard before the Court of Claims, the court, upon the evidence, makes the following

FINDING OF FACT.

I.

The claimant herein, a citizen of the United States, is secretary and disbursing agent of the Interstate Commerce Commission, and as such agent it becomes his duty to disburse the moneys appropriated by Congress from time to time to enable the Commission to carry out the provisions of the act of February 4, 1887, and amendments thereto. The disbursements were made under the direction of the Commission; and the accounts therefor, together with itemized vouchers, approved by the chairman of the Commission, were presented to the accounting officers of the Treasury Department for the quarter and year ending June 30, 1899; and also his supplemental accounts, with vouchers so made out and approved, for the same year, among which were the accounts and itemized vouchers for $310.37 for money paid from time to time to the Western Union Telegraph Company and Postal Telegraph Cable Company for sundry dispatches sent over their lines under the direction of said Commission.

II.

The accounts for money so expended for telegrams were disallowed by the Auditor for the State and other Departments, and on appeal to the Comptroller of the Treasury the decision of the Auditor was sustained on the ground that the claimant had not complied with the requirement of the Comptroller to furnish the original telegrams or copies thereof, or, if of a confidential nature, to furnish in lieu thereof a certificate to that effect signed by the chairman of the Commission.

In response to that ruling the claimant presented and filed with his said accounts the following order, issued by the Commission April 27, 1899:

"That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to
25 accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against public interest."

And that the Interstate Commerce Commission did, through their secretary, address to the Hon. R. J. Tracewell, Comptroller of the Treasury, a letter dated October 4, 1900, containing an invitation to

inspect the books, papers, and other matters relating to the accounts of the disbursing agent, as follows, viz:

"By the act of March 15, 1898, acts 1897–98, page 316, it is provided:

"'SEC. 5. All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to the inspection and examination by the Comptroller of the Treasury and Auditors of the Treasury authorized to settle such accounts or by the duly authorized agents of either of said officers.'

"I am authorized by the Commission to extend to the officers and agents referred to in this section the fullest opportunity of making such examination, in the offices of the Commission, of all such books, papers, and other matter relating to the accounts of the disbursing agents as they may see proper to examine, and among these all such telegrams as are embraced in the accounts of the disbursing agent. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should be thereby fully attained."

But the decision of the Comptroller was adhered to.

III.

The accounts and itemized vouchers were presented to the accounting officers in the form prescribed by statute; that is to say, that each telegram sent by the Commission, and the cost thereof, and the dates, number of words, persons from and to whom sent, places from and to which sent, and the charge for each message transmitted, were fully shown in a voucher approved by Martin A. Knapp, chairman, and the defendants concede the correctness of the several amounts so expended.

IV.

After the disallowance of the claimant's accounts for the moneys so disbursed to the Western Union Telegraph Company and Postal Telegraph Cable Company, as aforesaid, and to avoid any balance being stated against him, he, under protest, paid into the Treasury of the United States the full amount of the sum so disallowed, to wit, $310.37.

V.

That prior to January, 1899, the original telegrams, or copies thereof, or certificates that such telegrams were of a confidential character,
26 were not required by the auditing officers of the Treasury to be produced by the disbursing officers of the Department of State, or the Post-Office Department, or the Navy Department, or the Interstate Commerce Commission, with the vouchers produced by these disbursing officers, for the telegrams sent from such Departments on official business.

VI.

The correspondence by official communications between the Comptroller of the Treasury and the claimant appears in the letter of June 15,

1900, from Edward A. Moseley, secretary and disbursing agent, to Hon. R. J. Tracewell, Comptroller; the letter of July 23, 1900, from the Acting Comptroller to the claimant; the letter of October 4, 1900, from the claimant to the Comptroller, and the letter of October 6, 1900, to the claimant; all of which were filed as part of the claimant's petition and exhibits therewith.

CONCLUSION OF LAW.

From the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover judgment against the United States, on the authority of the Moseley case (35 C. Cls. R., 347), in the sum of three hundred and ten dollars and thirty-seven cents ($310.37).

By the Court.

Filed October 28, 1901.

27 IV.—JUDGMENT OF THE COURT.

EDWARD A. MOSELEY }
v. } No. 22494.
UNITED STATES. }

At a Court of Claims held in the city of Washington on the 28th day of October, A. D. 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that Claimant Edward A. Moseley do have and recover of and from the United States the sum of three hundred and ten dollars and thirty-seven cents (310\frac{37}{100}$).

By THE COURT.

28 V.—APPLICATION FOR AND ALLOWANCE OF APPEAL.

EDWARD A. MOSELEY }
v. } No. 22494.
UNITED STATES. }

From the judgment rendered in the above-entitled cause on the 28th day of October, 1901, in favor of the claimant, the defendants, by their Attorney-General, on the 21st day of January, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Asst. Attorney-General.

Let the appeal be allowed.
February 8, 1902.

CHAS. C. NOTT,
Chief Justice.

29 Court of Claims.

EDWARD A. MOSELEY)
v.) No. 22494.
UNITED STATES.)

I, John Randolph, assistant clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 12th day of February, A. D. 1902.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No., 18412, Court of Claims. Term No., 559. The United States, appellant, vs. Edward A. Moseley. Filed February 24th, 1902.

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Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-[illegible]

The United States, Appellant

v.

Edward A. Hooley, Appellee

MOTION TO ADVANCE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 559.

THE UNITED STATES, Appellant.

vs.

EDWARD A. MOSELEY, Appellee.

MOTION TO ADVANCE.

Edward A. Moseley, appellee, by his attorney, moves the Court to advance this cause on the docket, and set down the appeal for argument and submission, for an early day in the next term of the Court, and for grounds of this motion says:

1 The Comptroller of the Treasury asserts the right to require the production by the appellee, who is disbursing agent of the Interstate Commerce Commission, not only the vouchers for items of disbursement made by him for telegrams received and sent on official business by the Commission, but also the telegrams themselves, that he, the Comptroller, may examine their contents. The Commission, by special orders, have commanded this appellee, not to produce these telegrams, because the disclosure of their contents would be prejudicial to the public interests. And this appellee has furnished the Comptroller with a copy of that order.

2 On three several occasions has the Comptroller disallowed to this appellee the items for expenditures for telegrams in his quarterly accounts as disbursing agent of the Interstate Commerce Commission, and twice has this appellee been compelled to resort to the Court of Claims for redress. Each time has he recovered judgment for the amount which he has been required to pay into the Treasury, the Court of Claims sustaining him in his refusal to produce such telegrams before the Comptroller. Yet has the Comptroller disregarded those judgments of the Court of Claims, and has continued to disallow to appellee, in his accounts as such disbursing agent, all items of expenditures for such telegrams.

3 That appellee may not be compelled to resort to the Court of Claims for redress from such disallowances after the presentation of his accounts for settlement at the end of each quarter; that he, as well as all other disbursing officers and agents of the United States, may have definitely ascertained and determined their rights and duties in the premises, it is of the utmost importance that the questions presented in this case should be decided as speedily as possible.

4 The United States, appellant, concurs in this motion.

EDWARD A. MOSELEY.

BY HOLMES CONRAD,

Attorney.

2057

No. 248.

Brf. of Atty. Gen.l (Filed) Oct. 1902

Filed Oct. 11, 1902.

Office Supreme Court U.S.
FILED
OCT 11 1902
JAMES H. McKENNEY
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR THE APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR THE APPELLANTS.

STATEMENT.

This is an action brought by Edward A. Moseley, secretary and disbursing agent of the Interstate Commerce Commission, against the United States, in which he sought to recover a judgment for certain items of disbursements made by him as such disbursing agent which were disallowed in the settlement of his accounts at the Treasury Department. The court below found the facts to be as set forth in the record, and it was decided as a conclusion of law that the appellee was entitled to recover judgment for those disbursements. No opinion was given by the Court of Claims, but it appears from their conclusion of law (R., 18) that the case was decided "on the authority of the Moseley case," reported in 35 C. Cls. R., 347.

In that case the material facts were precisely similar to those of the present case, and the parties and the question of law were also the same as in the present case. Appellants now contend that the court below erred in their judgment in that case, and therefore they now assign like error to the judgment rendered in the present case.

In both cases, as more fully set forth in the findings of fact, the appellee sued as secretary and disbursing agent of the Interstate Commerce Commission; by direction of that Commission he made certain payments to telegraph companies for telegrams sent on business of the Commission, and he rendered his accounts for those disbursements, together with itemized vouchers therefor which were approved by the chairman of the Commission, to the accounting officers of the Treasury Department for settlement. In settling the accounts credit for these vouchers was disallowed, after a long correspondence, by the proper Auditor of the Treasury Department, upon the ground that the said disbursing agent had not complied with the directions of the Comptroller of the Treasury, which required him to send to the Auditor the telegrams mentioned in the vouchers, or copies thereof, or a certificate signed by the chairman of the Commission to the effect that the telegrams were of a confidential nature.

Instead of complying with that requirement the appellee deposited in the Treasury of the United States the amount of the disbursements so disallowed, and brought this and the former suit to recover judgment for that amount.

ASSIGNMENT OF ERROR.

The court below erred in their conclusion of law that the claimant was entitled to "recover judgment against the United States upon the authority of the *Moseley case*" (35 C. Cls. R., 347), and also in rendering judgment on that authority.

The court below had no jurisdiction to render a judgment in that case, because it was there held as a conclusion of law, as appears from the opinion of the court, that the "alternative requirements" [of the Comptroller] "of copies of telegrams, or if they were confidential, a certificate to that effect from the chairman of the Commission was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account." (35 C. Cls. R., 355, 356.)

THE QUESTION AT ISSUE.

The only question of law involved in this appeal is as to—

Whether the Court of Claims had jurisdiction to render a judgment against the United States for certain disbursements made by appellee, as secretary and disbursing agent of the Interstate Commerce Commission, to telegraph companies for official telegrams where the itemized vouchers for those disbursements had been approved by the chairman of the Interstate Commerce Commission, and for which vouchers credit was disallowed by the accounting officers of the Treasury Department in the settlement of said disbursing agent's

account, upon the ground that he "had not complied with the requirement of the Comptroller to furnish the original telegrams, or copies thereof, or, if of a confidential nature, to furnish in lieu thereof a certificate to that effect signed by the chairman of the Commission"?

POINTS OF ARGUMENT.

As will be seen from the correspondence set forth in the findings of fact, the Comptroller of the Treasury has decided that it is necessary to have the telegrams or copies thereof, or else a certificate of the chairman of the Commission for confidential telegrams, filed with the disbursing agent's account in order to enable the proper auditor to determine whether the telegrams were sent or received upon public business, whether the amounts charged for the service were according to the prescribed rates, etc. (R., 11.)

The Comptroller is the chief law officer of the Treasury Department in respect to questions arising in the settlement of accounts. He decided that the information so required was necessary to enable the auditor to settle this class of accounts—that is to say, to determine the question as to whether the disbursing agent was entitled to credit for the disbursements so made by him.

The court below having decided as a conclusion of law that the requirement of the Comptroller was "not unreasonable," it is submitted that they erred in rendering judgment for the appellee in the former case, and therefore they also erred in rendering a judgment in his favor in the present case. In the settlement of

these accounts the accounting officers have a discretionary duty to perform, and it is for them to determine the kind, the quantity, and quality of proof which would satisfy them in allowing credits for disbursements of public moneys. In other words, the allowance of such credits involves the exercise of executive discretion.

The Acting Comptroller's views in respect to the authority of the accounting officers, as set forth in the record, are as follows:

> The accounting officers are charged with the duty of passing upon accounts, and where disbursing agents claim credit for disbursing public money the accounting officers are entitled to the best evidence that such disbursements were legal and proper; and the general rule is that where the disbursement is on account of telegrams, the telegrams themselves should accompany the vouchers. The telegrams show whether they were on public business, from whom and from where, and to whom and to where sent, whether day or night messages, the number of words, whether over bond-aided lines, and whether the charge for the same message had been made in some other account, etc. To this general rule there is an exception. If the chairman of the Interstate Commerce Commission had certified that any particular telegrams sent by the Commission were of a confidential character, and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit,

> such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other Departments of the Government. (R. 11.)

The principle here contended for is set forth and recognized in *Decatur* v. *Paulding*, 14 Pet., 497, 519; *Watkins* v. *United States*, 9 Wall., 759, 764; *United States* v. *Fletcher*, 147 U. S., 664, 666; and it is based upon the rule that the judicial power will not interpose to limit or direct the action of departmental officers in respect to matters within their discretion.

In the case of *United States* v. *Fletcher*, above cited, it was held that where claims against the United States are presented to the proper Department for allowance and the Department suspends action until proper vouchers are furnished, or until other reasonable requirements are complied with, the court should not assume jurisdiction until final action is taken. The principle is there recognized that the Comptroller of the Treasury has the right to require an explanation as to items for which credit was asked in the accounts of a United States marshal, and, *held*, that it was an error in the court below to allow such items while a claim therefor was not finally determined at the Treasury Department.

In the case at bar it is true that the claim for credit was finally determined by rejection for want of compliance to the Comptroller's requirement; nevertheless it is respectfully submitted that the court below should

not have taken jurisdiction of the claim, for the reason that a lawful and, as the court held, a reasonable requirement of the Comptroller was not complied with by the appellee. To entertain a suit under such circumstances would be to enable the disbursing agent to disregard the executive discretion and power vested by law in the accounting officers of the Treasury Department.

It must be apparent to the court that, although the incurring of expenses and the duty of paying them are matters of executive discretion on the part of the Interstate Commerce Commission, there is another executive discretion vested in the accounting officers, in the matter of passing upon the sufficiency of the vouchers for such payments.

L. A. PRADT,
Assistant Attorney-General.

O

No. 248.

App't to Br. of Appellant.

Office Supreme Court U.S.
FILED
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Clerk.

Filed Oct. 31, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

APPENDIX TO BRIEF FOR THE APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

APPENDIX TO BRIEF FOR THE APPELLANT.

The following is a copy of the decision of the court in the case of *Edward A. Moseley* v. *The United States* (35 C. Cls. R., p. 347), referred to in the brief for the appellant herein:

Court of Claims.

No. 21473

(Decided April 2, 1900.)

EDWARD A. MOSELEY
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant herein is the secretary and disbursing agent of the Interstate Commerce Commission, and as

such disbursing agent submitted his accounts showing expenditures for and on behalf of said Commission to the Auditor for the State and other Departments for the second and third quarters of the fiscal year ending June 30, 1898, in the form of itemized vouchers approved by the chairman of the Commission, which accounts were examined and approved by said Auditor and settled, and the claimant was duly credited with the expenditures embraced in said account. Among which items of expenditures so settled, for which the claimant was duly credited, were sundry payments shown in said accounts to have been made by him to the Western Union Telegraph and Postal Telegraph Cable companies, aggregating $73.24.

II.

Thereafter, March 13, 1899, and within one year from the date of the settlement so made by the Auditor as aforesaid, the Comptroller withdrew said accounts from the files for the purpose of revision under section 8 of the act of July 31, 1894 (28 Stat. L., 207), and so advised the claimant by letter of that date, noting therein his objections to the several items of said account and calling upon the claimant for explanation in relation thereto.

Thereafter the claimant made explanation concerning the several items in his account; and the Comptroller, on May 26, 1899, allowed all the items of said account except the items for telegrams, as aforesaid, which were disallowed.

III.

The Comptroller assigned as his reasons for the disallowance of such items of expenditure for telegrams

that under the ruling of the Comptroller (4 Comp. Dec., 233) the original telegrams or copies thereof were not furnished therewith.

The claimant, under date of March 27, 1899, in relation thereto informed the Comptroller as follows:

> The Commission instructs me to say that for the present it declines to submit copies of the telegrams covered by these vouchers. Aside from the fact that it is impracticable to do so in some cases, a considerable number of the messages were highly confidential, and the Commission does not think it suitable that their contents should be known to every clerk who has access to your files.
>
> These vouchers show the dates, number of words, places from and to which sent, and the charge for each message transmitted. The chairman has certified to their necessity and approved the amount paid therefor. No law requires that copies shall be exhibited to the accounting officers, and any general regulation to that effect would be unreasonable as applied to the telegraph business of the Commission.
>
> Entertaining this opinion, the Commission directs me to inquire whether you will insist upon being furnished with copies of its telegrams.

In response thereto the Comptroller, under date of April 5, 1899, said:

> *Item 13.*—Telegrams. Original telegrams or copies are required (4 Comp. Dec. 233). If any of the telegrams were confidential, furnish a certificate from the chairman of the Commission stating that it would be prejudicial to the public interests to disclose the contents. Copies of all other telegrams are required. Confidential telegrams should be described by dates and amounts in the certificate to be signed by the chairman of the Commission.

Thereafter, under date of April 29, 1899, the claimant furnished the Comptroller with the action of the Interstate Commerce Commission in relation to the revision of his said accounts, as follows:

ORDER OF COMMISSION REFERRED TO.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., the 27th day of April, A. D. 1899.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, commissioners.

The following proceedings were had, to wit:

The subject of the revision of accounts of the secretary and disbursing agent of the Commission by the Comptroller of the Treasury being under consideration, the secretary presented a communication from the Comptroller, dated April 17, 1899, relating, among other things, to the telegraphic messages of the Commission.

It was ordered that so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest.

It was also ordered, in accordance with the practice heretofore always required by the Commission, that no telegraph bills be paid by the disbursing agent except upon itemized vouchers, showing the date, name of sender and receiver, places from and to which sent, number of words and amount charged of each message paid for, and only after such itemized vouchers have

been carefully compared with the messages on file with the Commission.

A true copy:

EDW. A. MOSELEY, *Secretary.*

No further action was taken by the Comptroller looking to the allowance of said account, but his former action in reference thereto was allowed to stand; and thereafter, before the commencement of this suit, the claimant as conceded by the defendants, paid into the Treasury of the United States to their credit the said sum of $73.24.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment in the sum of seventy-three dollars and twenty-four cents ($73.24).

PEELLE, J., delivered the opinion of the court:

This action is to recover for money paid into the Treasury by reason of the disallowance by the Comptroller of money expended by the claimant as disbursing agent of the Interstate Commerce Commission in the transmission of telegrams for and on behalf of the Commission.

The material facts are that the claimant, as disbursing agent, paid to the several telegraph companies, set out in the findings, $73.24 and presented his account therefor, with others, in the form of itemized vouchers approved by the chairman of the Commission, to the Auditor for the State and other Departments, for settlement. His accounts were settled by that officer and the claimant was credited with the amount so paid. The Comptroller, within a year thereafter, withdrew the accounts, with others, for revision, under

section 8, act of July 31, 1894 (29 Stat. L., 207); and while allowing such other accounts, disallowed the one for the money so expended for telegrams, on the ground that the claimant had not furnished therewith the original telegrams or copies thereof as required by the ruling of his office (4 Comp. Dec., 233), nor furnished in lieu thereof the certificate of the chairman of the Commission that such telegrams were confidential. Neither having been furnished as required, the amount was disallowed.

None of the facts stated are controverted by the defendants. The claimant predicates his right to recover back the money paid into the Treasury under the adverse ruling of the Comptroller on the ground that under the last paragraph of section 7 of the "act to regulate commerce," as amended by the act of March 2, 1889 (25 Stat. L., 855; I Supp. R. S., pp. 684, 690), "all of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission." And that under that provision of the act the claimant, as disbursing agent of the Commission, had no authority to inquire as to "whether the expenses for which the charge was made were, in fact, 'necessary,' or whether the 'business' charged for was, in fact, 'official;' that these were matters, under the act of Congress, for the chairman of the Commission to determine."

And, further, that the appropriation act of the same date (25 Stat. L., 939; I Supp. R. S., 698, paragraph 3),

providing "that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury," did not repeal or modify the act in respect of the duties of the claimant as such disbursing agent, and that when he presented his account in the form of itemized vouchers, approved by the chairman of the Commission, he was entitled to credit therefor; that the Comptroller in his revision of the account was limited in the discharge of his duties to the inquiry whether the amounts expended for the several objects named in the appropriation act exceeded the appropriation therefor, and whether such expenditures were itemized and approved by the chairman of the Commission.

The two acts referred to became law on the same day, though it is evident that the second act referred to followed the first and that it was inserted in the appropriation act to remove any doubt which the first might otherwise have created as to the authority and duty of the accounting officers in respect of the audit of such accounts.

Had the first been omitted from the interstate-commerce act, there would have been no necessity for the second, as such accounts would then have been subject to audit and adjustment the same as the accounts of other officers of the Government.

We are, therefore, inclined to the opinion that while the language "that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury" did not repeal the former act requiring the payment of such expenses to be made "on the presentation of itemized vouchers therefor approved by the chairman of the Commission," it did nevertheless so modify it as to subject such

expenses to audit "by the proper accounting officers of the Treasury," and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers.

The alternative requirement of copies of telegrams, or if they were confidential, a certificate to that effect from the chairman of the Commission was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account.

The question before us is, Are the payments shown in the account to have been made to the several telegraph companies proper and legal charges against the Government?

The claimant's statement of account being in the form prescribed by statute, i. e., "itemized vouchers therefor, approved by the chairman of the Commission," is *prima facie* correct. The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury; and, as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly.

O

No. 248.

Brf. of Conrad for Appellee.

Office Supreme Court U.S.
FILED
OCT 20 1902
JAMES H. McKENNEY

Filed Oct. 20, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES,
Appellant,
v.
EDWARD A. MOSELEY,
Appellee.
} No. 248.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, Appellant, *v.* EDWARD A. MOSELEY, Appellee.	No. 258.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

Edward A. Moseley, who is the secretary and the disbursing agent of the Interstate Commerce Commission, laid before the "Auditor for the State and other Departments" his accounts and vouchers, as such disbursing agent, for the several quarters of the years 1898 and 1899, as set forth in his petition, and the auditing officer disallowed items aggregating in amount $310.37, being for telegrams sent on the official business of the Commission.

The disbursing agent, who is appellee here, paid this amount, so disallowed, as a credit in his accounts, into the Treasury, and brought this suit to recover it.

The Court of Claims gave judgment for the full amount so demanded; and from that judgment this appeal is taken by the United States.

It is due to the legal adviser of the Government to say that we believe this appeal to be taken, not because of any doubt as to the validity of the claim, or as to the propriety of the judgment therefor, but because the views entertained and enforced by the Comptroller of the Treasury as to the power and duties with which he is clothed by law have become so radical and extreme as to excite grave antagonism on the part of some of the Executive Departments of the Government, and seriously to impair the usefulness of his office. It has therefore become necessary that there should be a definition by this Court of the large powers which the Comptroller claims have been conferred upon him by the statutes under which he performs the duties of his office.

The question presented in this case is as to the power of the Comptroller to require the disbursing agent of the Interstate Commerce Commission to produce before the auditing officers of the Treasury, with his vouchers for items of disbursements for telegrams sent on the official business of the Commission—

"Copies of all telegrams for which such charge was made, or to furnish a certificate that such telegrams are of such a confidential nature, that to file them with the account would be prejudicial to the public interest, and, in default of producing them, to disallow the agent credit in his accounts for the amounts so disbursed by him."

It will be seen from the findings of Fact No. III (Record, p. 17) that this requirement was fully complied with, except as to disclosing the actual contents of the telegrams; and it will be further seen from No. II (Record, p. 17) that even these were offered for inspection at the office of the Commission.

Indeed, the findings of fact in this case (Record, pp. 16–18) leave no room for doubt as to the full and hearty compliance by the appellee here, with every requirement of the Comptroller, as far as it was possible for him to do so; and in his application of October 4th, 1900 (Record, p. 12), to the Comptroller, to reconsider the ruling of the Auditor in disallowing the items for telegrams, this appellee said:

"With the merely abstract question of the reasonableness or unreasonableness of the rules and regulations adopted for the government and conduct of your office, I have nothing to do. Against your

attempted application, however, of such rules and regulations to my official conduct and especially the reiterated attempts to require of me the production of papers that are not within my control, and which I am prohibited by the Commission whose agent I am, from disclosing to the scrutiny of all the employees in the accounting office of the Treasury, I do protest, and again refer the matter to that sense of propriety and justice which should be the guide of all official action."

ARGUMENT.

THE REGULATION REQUIRING THE DISBURSING AGENT OF THE INTERSTATE COMMERCE COMMISSION TO PRODUCE WITH HIS VOUCHERS, COPIES OF THE TELEGRAMS, WAS IN VIOLATION OF THE STATUTES PRESCRIBING HIS DUTIES.

The "Act to Regulate Commerce" as amended March 2, 1889, Sec. 7, Chapter 382 (1 Supp. R. S., p. 690), provides:

> "All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the City of Washington, *shall be allowed and paid on the pre-*

sentation of itemized vouchers therefor approved by the Chairman of the Commission."

And the appropriation act of the same date (1 Supp. R. S., p. 698) provides:

> "That hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury."

By this legislation it is made the duty of the disbursing agent to "allow and pay" all expense accounts presented to him which are supported by "itemized vouchers therefor approved by the Chairman of the Commission."

The statute gives the disbursing agent no other discretion in the allowance and payment of such accounts, than to ascertain the facts that the account is supported by "itemized vouchers" and that these have been "approved by the Chairman of the Commission." It does not authorize him to inquire whether the expense for which the charge was made was in fact "necessary," or whether the "business" charged for was in fact, "official." All these matters are under the Act of Congress for the Chairman of the Commission to determine. Itemized vouchers approved by the Chairman of the Commission, when presented to the disbursing agent of the Commission, must be "allowed and paid" by him when satisfied as to their authenticity.

The appropriation act approved July 31, 1894 (2 Supp. R. S., p. 214), contains the provisions under which the accounting division of the Treasury was readjusted; many offices were abolished, and their duties distributed. By sec. 4, pages 212 and 213, the office of "Comptroller of the Treasury" was created, and it was provided that—

> "He shall perform the same duties and have the same powers and responsibilities (except as modified by this Act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this Act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury."

Sec. 5 (p. 213) provides that—

> "The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom."

Sec. 7 (p. 214) provides that—

> "Fifth. The Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the offices of * * *

Interstate Commerce Commission. * * * He shall certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate according to the character of the account, to the Secretary of the Senate, Clerk of the House of Representatives * * * or the Chief Officer of the Executive Department, Commission, board, or establishment concerned. * * * "

Sec. 8 (p. 215) provides that—

"The balances which may from time to time be certified by the Auditor to the Division of Bookkeeping and Warrants, * * * shall be final and conclusive upon the Executive Branch of the Government, except that * * * the Comptroller of the Treasury may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon revision shall be final and conclusive upon the Executive Branch of the Government."

These are, substantially, all the powers conferred by statute upon the Comptroller applicable to the matter here in hand. The expenses of the Interstate Commerce Commission are to be audited by the proper accounting officer of the Treasury.

But, what is involved in such "auditing?" What requirements can these accounting officers impose upon the disbursing agents whose accounts may be before them to be audited? Can the Comptroller, under the power conferred upon him to "prescribe the forms of keeping and rendering all public accounts," impose upon the disbursing agent of the Commission, duties inconsistent with those which are laid upon him by statute?

The act of March 2, 1889, supra, provides that all of the expenses of the Commission "* * * *shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Chairman of the Commission.*"

The Comptroller has prescribed a rule and enforced it in some cases by his decisions, and has disallowed the items of expenditure for telegrams in the accounts of this disbursing agent—

> "because of failure to furnish copies of all telegrams for which charge is made or to furnish a certificate that such telegrams are of such a confidential nature that to file them with the accounts would be prejudicial to the public interests." (Record, p. 9.)

To the application of this rule to him, the disbursing agent of the Commission objected, on the grounds—

(1) That the statute in express terms required him to pay all expenses of the Commission which were supported

by "itemized vouchers therefor, approved by the Chairman of the Commission"—that these were the *only* vouchers he had to lay before the accounting officers.

(2) That the original telegrams, vouchers for which were produced by the disbursing agent, were not under his control, but were by the express order of the Commission preserved among the private files of its office, so that the disbursing agent had no power of his own to produce them, or copies of them, had he desired to do so.

(3) That the Commission had on April 27, 1899, made and issued an order on the subject of the Comptroller's demand, as follows:

> "That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission, to accompany telegraph vouchers for which credit is asked, be disregarded by the Secretary and disbursing agent—the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against public interest."
>
> (Finding of Fact No. II, Record, p. 16.)

(4) That in requiring the disbursing agent to allow and pay all expenses of the Commission, as appeared by item-

ized vouchers approved by the Chairman, Congress had plainly manifested the intent and purpose of making the Chairman of the Commission—and not its disbursing agent—the sole judge and arbiter as to the legality and the propriety of the expenditures, and that an account made up of items of amounts due to specified persons, when approved by the Chairman of the Commission, should be paid by the disbursing agent without further investigation or scrutiny by him.

(5) That while the Commission had prohibited the disbursing agent from producing before the accounting officers of the Treasury the telegrams sent on the business of the Commission, because they were "confidential," yet had the Commission, by its communication to the Comptroller of October 4, 1900, invited the officers and agents of the accounting division to make examination of such telegrams "in the offices of that Commission," and there satisfy themselves as to the subject matter of such telegrams.

(Finding of Fact, No. II, Record, p. 17.)

These considerations failed to impress the Comptroller, to whom they were addressed, and he adhered to his view; but they did not fail to persuade the mind of the Court of Claims, which accordingly found upon the law in favor of the Claimant.

The Commission, as we have seen, held that *all* of its telegrams, which were embodied in the accounts of the disbursing agent, were *confidential*, and that for that reason should not be exposed to the view of the clerks in the accounting division of the Treasury. But the Comptroller appears to have been unwilling to accept this formal, official certificate of the Commission as binding upon him; and hence in his communication of July 23, 1900, he made this remarkable criticism upon it:

> "It will be observed that the order is applicable, not to any telegram in particular, but to all telegrams —to those that had been sent at the time the order was made, and to those that might be sent hereafter."
>
> (Record, p. 10.)

But it will be seen from the order itself (Record, p. 16) that it refers to those telegrams only, for which the disbursing agent had paid, and the vouchers for which had been produced in support of the items, which the Comptroller had declined to allow, because the telegrams were not produced with the vouchers. An attentive scrutiny of the Comptroller's communications will fail to discover any other ground for the disallowance of the items than those which we have considered.

THE POWERS ASSUMED BY THE COMPTROLLER ARE IN EXCESS OF THOSE CONFERRED UPON HIM BY LAW.

The action of the Comptroller in this case is a logical result of the extraordinary powers and functions which he has persistently asserted to be incident to his office. His views as to these assumed attributes of his office are quite fully disclosed in his voluminous official publications, annual reports of the Comptroller of the Treasury, and the published volumes of his official decisions. It is not inappropriate, and is certainly admissible, to refer to these, for the purpose of ascertaining whether the error, which, in our judgment vitiates his conclusion in this case, is not directly traceable to the vice which lurks in his premises.

In the third volume of Comptroller's Decisions, page 236, the Comptroller said:

> "Copies of telegrams have by the long established practice of the accounting officers been required of all officers or employees of the Government, except possibly in some special cases under extraordinary circumstances."

In the fourth volume, page 237, his rule of conduct is stated in full:

> "Some unusual public interest may require the sending of a confidential telegram where secrecy is

a public necessity. In such a case the suppression of such a message would be justified on the ground of paramount necessity. * * * When such an exceptional case presents itself a certificate of the Secretary of War may be accepted in lieu of the message, provided said certificate covers all material points. The certificate should state that the message was actually transmitted, and was confidential, and that it would be prejudicial to the public interests to have it exposed; that it was on public business, and the number of words it contained; whether it was a day or night message; ordinarily the person by whom sent and to whom delivered; the place from which sent and where delivered; whether or not directions were given for its transmission over a bond-aided line; such a showing of the nature of the business upon which the message was sent as will enable the accounting officers to determine the appropriation properly chargeable with the expense; and that the same has not been paid." (4 Comp. Dec. p. 237.)

It may not be out of place to suggest that the Supreme Court does not regard the rule of conduct of the accounting officers, even though of forty years' standing, as affording sanction for overruling the statutes. (United States v. Temple, 105 U. S., 97–99.) Neither a court nor the

head of an Executive Department can establish rules and regulations which are not expressly, or impliedly, authorized by Congress. In Harvey v. U. S., 3 C. Cl. R. 38, that Court held, with reference to such rules:

> "Those words describe rules relating to the subject on which a department acts, and are made by its head under an Act of Congress conferring that power, and thereby giving to such regulations the force of law."

And where the Court of Claims itself had established the rule of procedure, where a claim was presented for adjudication, that the petition must show that application for its allowance had been made to that department in which such claims were ordinarily settled, the Supreme Court held (Clyde v. United States, 13 Wallace, 38)—

> "This was establishing a jurisdictional requirement, which Congress alone had power to establish."

Congress has invested the executive head of the Interstate Commerce Commission with the power of examining the items of proposed expenditures payable out of the appropriations annually made for the expenses of that Commission, and of approving such as in his judgment are proper to be made, and of attesting that approval, and authenticating the vouchers for such items of expenditure by marking the vouchers "Approved;" and Congress has also made it the duty of the disbursing agent of the

Commission to allow and pay all such itemized vouchers when so authenticated. Congress, in like manner, has made the Secretary of the Senate and the Clerk of the House of Representatives the disbursing officers of the two Houses, respectively, and their disbursements are conclusive on the accounting officers of the Treasury; and their reports are made only to the Congress (Rev. Stat., secs. 56, 57, 63). Also, it seems that the allowance of the expenses of the Supreme Court of the United States is not discretionary with the accounting officers of the Treasury, although it does appear from the annual report of the Comptroller of the Treasury for the year ending June 30, 1899, pages 9 et seq., that under the Act of Congress of March 15, 1898 (30 St., 316), providing that—

> "All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials,"—

the Comptroller claims authority to supervise such accounts.

The Comptroller, acting upon his construction of this Act, demanded of the Clerk of the Supreme Court of the

United States the production of all such books, papers and other matters in his office, for the inspection by the Comptroller or his agents. With this demand the Clerk declined to comply, and referred the matter to the Chief Justice of the United States, who, after conference with his colleagues, sustained the action of the Clerk. The Comptroller appears to have been unwilling to accept this opinion of the Justices as final and conclusive of the matter, but communicated the entire correspondence to the Secretary of the Treasury, saying,—"I lay all the facts before you as the head of this department in order that you may take such action in the premises as to you may seem right and proper."

The rule of the Comptroller, as it appears above, embraces two classes of official telegrams, viz., the *confidential*, and the *non-confidential*.

As to the non-confidential, he requires that each disbursing officer shall produce with his vouchers for such telegrams the original telegrams or copies thereof; and as to the confidential, that he shall produce the certificate of the head of the department, the characteristics of which certificate are prescribed.

Now consider the reasonableness, and the practicability of this rule.

The official telegrams that are sent out from the Executive Departments are many thousands in number, in

each fiscal quarter. Those of the Weather Bureau alone are so numerous that the rule has been suspended as to it. Those of the War, the State and the Navy Departments frequently extend to great length.

What clerical force would be required to make copies of all the non-confidential telegrams? And as to those that are confidential, what far greater clerical force would be required to frame the lengthy certificates which this rule prescribes? And how much of the time of the heads of departments would be taken up in verifying and signing these certificates? During the late Spanish war, and the trouble in China, the telegrams of the War, State and Navy Departments were numerous and of the gravest character. They were, in the highest degree confidential, yet the rule of the Comptroller would disallow to the disbursing officer the amounts expended, unless the vouchers for expenditure were accompanied by a certificate as to their character by the head of the department.

The fifth Finding of Fact (Record, p. 17) shows that prior to January, 1899, this rule was never enforced as to the Treasury, State, Navy or Postoffice Departments, or to the Interstate Commerce Commission.

It does not affirmatively appear that it has ever at any time been enforced as to any department. But it is altogether unnecessary to rely on this fact for the purposes of this case.

The rule is obviously unwise and impracticable in this, that compliance with its requirements would tend to defeat one of the objects for which the Interstate Commerce Commission was formed. No agency or instrumentality of the Government requires for its efficient operation the exercise of such constant prudence and intelligent discernment as does this Commission. Its duty is—

The ascertainment of the facts that underlie the controversies between common carriers on the one hand and persons and localities on the other. In the investigation of these controversies many agents are employed by the Commission, between whom and the Commission constant communication is maintained. These communications are, obviously, of the most confidential character, involving inquiries into the criminal acts and private conduct of the carriers and of their officers and agents, and they are often conducted necessarily by telegraph. The disclosure of these telegrams to the curious or, it may be, to the covetous eye of the thousands of clerks in the Treasury Department, might inevitably lead to the defeat of the purposes for which the information was sought or obtained, and perhaps subject the parties concerned to pains and penalties. The same reasons that preclude the confidential communications of the Secret Service Bureau from exposure and publication apply with equal force to those of this Commission.

Can the Comptroller by his rule lawfully impose upon the Chairman of the Interstate Commerce Commission the additional and irksome burden of obtaining copies of all the non-confidential telegrams sent out from his office, and of preparing and filing, in respect to each confidential telegram, the certificate which the Comptroller here requires?

The Comptroller appears to be of the opinion that the same rule obtains in the Executive Departments of the Government that exists in the counting room of a private business concern, i. e., that the will of the proprietor is the law of the office. In the annual report of the Comptroller of the Treasury for the fiscal year ended June 30, 1899, page 8, he says:

> "Disbursing officers will from time to time be seasonably warned, where it is found that incorrect methods of accounting are indulged in by them, liable from their continuance to result in loss to the Government; and after such warnings will be expected to conform to the well-settled usages of safe and correct methods of accounting."

Congress may not have been properly advised as to these "well-settled usages of safe and correct methods of accounting" when it authorized and repaired this disbursing agent to pay all such accounts as were sustained by itemized vouchers approved by the Chairman of the Commission,

but it has so enacted, and that is the law. Now, can it be that the Comptroller, because he disapproves of the legislation of Congress in this matter, is invested with revisory power over that legislation and may amend and enlarge it to secure what, in his judgment, may be better results? Can he in the exercise of such power control the discretion of the Chairman of the Interstate Commerce Commission, to whom Congress has confided the duty of determining as to the sufficiency of the vouchers?

The correspondence exhibited with the petition discloses the fact that the Commission and its disbursing agent have not been disposed to stand upon any narrow or merely technical grounds, but have been at great pains to indulge the Comptroller by a full compliance with all of his exactions which are not impracticable or absurd. The Commission by its order (R., 16) has even endeavored to gratify his demands as to the vouchers for telegrams by declaring in the most formal but explicit terms that *all* the telegrams were of a confidential nature and can not for that reason be produced. Yet, despite this substantial compliance with the Comptroller's requirement, that most rigid and uncompromising functionary has persisted inexorably in his contention, until no other course remains to the disbursing agent but to have the Comptroller's objections denounced as "frivolous and vexatious" upon an appeal to this Court. (United States v. Harmon, 147 U. S., 268, 282.)

The Comptroller of the Treasury may revise on his own motion the accounts settled and stated by the Auditor for the State and other departments; and also revise the decisions of the Auditor making an original construction or modifying an existing construction of statutes.

But this power must be exercised with due regard to the existing law, and where the existing law provides one method of accounting, it is not for the Comptroller to require the auditors "to conform to" what he may regard as "the well-settled usages of safe and correct methods of accounting," and where the existing law invests a head of department with the power of "approving" such vouchers as in his judgment are proper, and directs the disbursing agent to pay all such itemized vouchers as are approved by the head of the department, and such agent does, under that direction, pay such items, it is not competent for the Comptroller to hold that—

> "the accounts of the disbursing agent of the Interstate Commerce Commission are, by law, required to be audited *on their merits* by the accounting officers."

Nor that—

> "In the performance of that duty it is necessary to have the same character of evidence in support of vouchers as is required of all other disbursing officers." (4 Comp. Dec., p. 276.)

It is for the Chairman of the Commission, and not for the Auditor or the Comptroller, to determine as to the merits of the accounts, if the items are within the scope of the law. Attention has already been directed to the fact that the two statutes, viz., the Interstate Commerce Act, which provides that "All of the expenses of the Commission shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission," and the act requiring "That hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury," were both approved on the same day, viz., March 2, 1889, and must, therefore, be construed together. They are not repugnant to or inconsistent with each other. One did not repeal or modify the other, but the two must be construed together. (Opinion of Attorney-General McKenna, 21 Atty-Genl. Opinions, p. 604.) One provides for the authentication of the vouchers upon which the disbursing agent shall allow and pay the items of the expenses of the Commission. The other provides that the accounts sustained by vouchers so authenticated shall be audited by the proper accounting officers of the Treasury. With the *merits*, therefore, of the vouchers so authenticated, neither the Auditor nor the Comptroller has anything whatever to do. Nor, for that matter, has the disbursing officer. When so itemized and authenticated he *must* pay them.

They may ascertain whether the vouchers are authenticated as required by law, and they may also see that the Commission has not, in its disbursements, exceeded the amounts to which by law it is limited for certain prescribed objects, but beyond these limitations they can not rightfully pass.

This disbursing agent is, of course, a bonded officer of the government, and gave as he was required acceptable sureties on his official bond. These sureties, it may be reasonably presumed, ascertained before binding themselves what legal obligations they were assuming by their undertaking. They were probably advised that under the law, "the faithful performance of his duties as such disbursing agent," involved the payment by him of only such vouchers as were itemized, and were approved by the Chairman of the Commission. This undertaking they were willing to assume, while they would have declined to undertake for the performance of all such unknown and unascertainable duties as the present and future Comptrollers might impose upon the disbursing agent, in addition to those prescribed by the terms of the statute. The effect of the construction which the Comptroller places upon that statute necessarily is to increase in character and extent the obligations of the sureties beyond those contemplated and secured by the bond.

In the previous case (Moseley v. U. S., 35 Ct. Cl. R., 347),

the facts of which were substantially those of this case, the Court of Claims found for the claimant, but in its opinion it stated the rule established by the Comptroller, and said:

> "Such a requirement is not unreasonable, and I cannot see that it will work any greater inconvenience to the Commission than it does to all the other Departments of the Government."

But by reference to that opinion, it will be seen that the Court did not advert to the feature that distinguished the Commission from the other departments which, as we have shown, is that by the Act of Congress creating the Commission, it is provided that—

> "All of the expenses of the Commission * * * *shall be allowed and paid*, on the presentation of itemized vouchers therefor approved by the Chairman of the Commission, * * * ."

Under that Act, the duty was peremptorily laid upon the disbursing agent to pay all claims presented to him, where the voucher was itemized, and was approved by the Chairman.

Under the rule of the Comptroller, the disbursing officer is denied credit in his accounts for all disbursements for official telegrams, unless his vouchers for such dis-

bursements are accompanied by the original telegrams or copies thereof, or a certificate by the Chairman of their confidential character.

The disbursing agent has shown, as stated above, why compliance with this requirement is altogether beyond his power.

If the Act of Congress had provided that in addition to the "itemized vouchers" and the "approved by the Chairman," there should also be the original telegrams, or the copies thereof, or the certificate of the Chairman, then the disbursing officer would not have been warranted in making the disbursement in the absence of these essential features. But Congress had not made this requirement. It has prescribed plainly the "ear-marks" by which the disbursing agent might know the claims he was authorized and directed to pay. The Comptroller has added these further exactions; and by so doing has said to the disbursing agent—although you may pay the claims which bear the ear-marks which Congress has prescribed, yet will I deny to you credit for such disbursements, unless you add to these the further badges which I have prescribed. The disbursing agent is thus placed in this embarrassing predicament: He is compelled to disburse under the Act of Congress, but he is denied credit for such disbursements under the Act of the Comptroller.

In the brief for the United States, the case of United

States v. Fletcher, 147 U. S., 664, is relied on as sustaining the reasonableness of this requirement. But it is manifest that this arises from a misapprehension of that case, which holds that where a claim is presented against the Government and is pending in the Department out of which it is arisen—whether for further proof or for other reasons, the Court should not be called on to interfere. But that does not warrant that Department in adding to the burden of proof other and further requirements than those which are prescribed by law. It certainly does not warrant the auditing officers of the Government in setting at naught the Act of Congress, because in the opinion of these officers, Congress had not gone far enough in its specification of the proper requirements.

It might be enough to say in reply to the view urged in the Government's brief, that although the Court of Claims thought that the requirement was reasonable, yet did it also decide that the claimant had fully complied with it. And yet, despite this solemn adjudication by a Court competent and charged with the duty of deciding the case, the Comptroller, when the identical state of facts between the same parties came again before him for his official action, ignored and repudiated the authority of the Court, as he had by his rule ignored and repudiated the Act of Congress.

This Court cannot take judicial notice of the many and flagrant instances, in which the official action of the Comptroller is impairing and obstructing the operation of the Executive Departments of the Government, by a zeal untempered by discretion, but it may not be improper to invite its attention to the recent opinion of Judge Lowell of the United States District Court for Massachusetts, in the case of Lovering v. The United States, as to the general conduct of business in the Comptroller's office.

> "In going through the numerous items, the Court has been greatly assisted by the discrimination of the assistant district attorney. It is to be regretted that the Comptroller is without the advice of some lawyer like him, of competent knowledge and common sense. Such advice would save honest creditors of the United States from disheartening delay, and the Court from a burden of needless litigation.
>
> "The Government is not protected from unjust claims by the postponement and refusal of payment on technicalities of which a private employer would not avail himself. Like any method which savors of sharp practice, this practice does not protect the Government from ill-founded claims, but rather be-

gets them, and soon becomes more costly than that prompt discharge of liabilities that is practised among business men."

On the whole case, then, as presented in the record, it is respectfully submitted that the rule of the Comptroller requiring the disbursing agents of the Executive Departments of the Government to exhibit with their vouchers for disbursements for official telegrams, the originals, or copies of such telegrams, or, if confidential, the certificate of the head of the department, as to their confidential character, is unwise, unreasonable, and impracticable, and, as to the disbursing agent of the Interstate Commerce Commission, is altogether unwarranted by law, and directly in violation of the statute, by which his duties are defined and imposed.

HOLMES CONRAD,
for Appellee.

Supreme Court of the United States.

No. 248.—October Term, 1902.

The United States, Appellant, vs. Edward A. Moseley. } Appeal from the Court of Claims.

[December 1, 1902.]

Mr. Justice McKenna delivered the opinion of the Court.

This was a petition in the Court of Claims to recover the sum of $310.37, disallowed by the auditing officers of the government.

The petitioner is Secretary of the Interstate Commerce Commission, and the claim disallowed was incurred for telegrams sent at the direction of the Commission. Judgment passed for the petitioner October 28, 1901, and the United States took this appeal.

The findings of fact and the conclusion of law by the Court of Claims were as follows:

"I. The claimant herein, a citizen of the United States, is Secretary and disbursing agent of the Interstate Commerce Commission, and as such agent it becomes his duty to disburse the moneys appropriated by Congress from time to time to enable the Commission to carry out the provisions of the act of February 4, 1887, and amendments thereto. The disbursements were made under the direction of the Commission; and the accounts therefor, together with itemized vouchers, approved by the chairman of the Commission, were presented to the accounting officers of the Treasury Department for the quarter and year ending June 30, 1899; and also his supplemental accounts, with vouchers so made out and approved, for the same year, among which were the accounts and itemized vouchers for $310.37 for money paid from time to time to the Western Union Telegraph Company and Postal Telegraph Cable Company for sundry dispatches sent over their lines under the direction of said Commission.

"II. The accounts for money so expended for telegrams were disallowed by the Auditor for the State and other Departments, and on appeal to the Comptroller of the Treasury the decision of the Auditor was sustained on the ground that the claimant had not complied with the requirement of the Comptroller to furnish the original telegrams or copies thereof, or, if of a confidential nature, to furnish in lieu thereof a certificate to that effect signed by the chairman of the Commission.

"In response to that ruling the claimant presented and filed with his said accounts the following order, issued by the Commission April 27, 1899:

'That so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the Secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against public interest.'

"And that the Interstate Commerce Commission did, through their Secretary, address to the Hon. R. J. Tracewell, Comptroller of the Treasury, a letter dated October 4, 1900, containing an invitation to inspect the books, papers and other matters relating to the accounts of the disbursing agent, as follows, viz:

'By the act of March 15, 1898, (Acts 1897–99, page 316,) it is provided:

'SEC. 5. All books, papers and other matters relating to the accounts of officers of the government in the District of Columbia shall at all times be subject to the inspection and examination by the Comptroller of the Treasury and Auditors of the Treasury authorized to settle such accounts or by the duly authorized agents of either of said officers.'

'I am authorized by the Commission to extend to the officers and agents referred to in this section the fullest opportunity of making such examination, in the offices of the Commission, of all such books, papers and other other matter relating to the accounts of the disbursing agents as they may see proper to examine, and among these all such telegrams as are embraced in the accounts of the disbursing agent. By this means the objections which the Commission have made to the undue publicity of their telegrams will, in some measure, be avoided, and the purposes of the auditing officers should be thereby fully attained.'

'But the decision of the Comptroler was adhered to.'

"III. The accounts and itemized vouchers were presented to the accounting officers in the form prescribed by statute; that is to say, that each telegram sent by the Commission, and the cost thereof, and the dates, number of words, persons from and to whom sent, places from and to which sent, and the charge for each message transmitted, were fully shown in a voucher approved by Martin A. Knapp, chairman, and the defendants concede the correctness of the several amounts so expended.

"IV. After the disallowance of the claimant's accounts for the moneys so disbursed to the Western Union Telegraph Company and Postal Telegraph Cable Company, as aforesaid, and to avoid any balance being stated against him, he, under protest, paid into the Treasury of the United States the full amount of the sum so disallowed, to wit, $310.37.

"V. That prior to January, 1899, the original telegrams, or copies thereof, or certificates that such telegrams were of a confidential character, were not required by the auditing officers of the Treasury to be produced by the disbursing officers of the Department of State, or the Post Office Department, or the Navy Department, or the Interstate Commerce Commission, with the vouchers produced by these disbursing officers, for the telegrams sent from such Departments on official business.

"VI. The correspondence by official communications between the Comptroller of the Treasury and the claimant appears in the letter of June 15, 1900, from Edward A. Moseley, Secretary and disbursing agent, to Hon. R. J. Tracewell, Comptroller; letter of July 23, 1900, from the Acting

Comptroller to the claimant; the letter of October 4, 1900, from the claimant to the Comptroller, and the letter of October 6, 1900, to the claimant; which were filed as part of the claimant's petition and exhibits therewith.

"*Conclusion of law.*

"From the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover judgment against the United States, on the authority of the Moseley case (35 C. Cls. R. 347), in the sum of three hundred and ten dollars and thirty-seven cents ($310.73.")

The case is in narrow compass. There is no controversy over the fact of expenditure of the sum sued for, and the Court of Claims found that "the accounts and itemized vouchers were presented to the accounting officers in the form prescribed by statute; that is to say, that each telegram sent by the Commission, and the cost thereof, and the dates, number of words, persons from and to whom sent, places from and to which sent, and the charge for each message transmitted, were fully shown in a voucher approved by Martin A. Knapp, chairman, and the defendants concede the correctness of the several amounts so expended."

Relying on a former decision between the same parties, (35 Court Claims, 347,) the court evidently thought that the issue made by the government was not substantial. In that case it was said: "The claimant's statement of account being in the form prescribed by statute, *i. e.*, 'itemized vouchers therefor, approved by the chairman of the Commission,' is *prima facie* correct. The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury; and, as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly."

The case comes, therefore, to a very narrow question. The act to regulate commerce as amended March 2, 1889, (Sup. R. S. 690,) provides "all the expenses of the Commission . . . shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission." The appropriation act of the same (Id. 698) date provides: "That hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury."

It is claimed that these provisions can be reconciled and leave unimpaired the first as the only condition of the allowance and payment of the expenses of the Commission Not passing upon that but granting the power of the auditing officers to require something more, we think their requirement was substantially complied with.

It is to be remembered that the petitioner (appellee) is but the Secretary of the Commission. He does not direct its functions, its expenditures, or control its records. He could only submit the requirement of the Comp-

troller to the Commission and its response to the Comptroller. Its response was "that so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the Secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against public interest." This was a substantial compliance with the requirement of the Comptroller.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S